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Attorney Docket No. 05725.0588-00000



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Nathalie JAGER LEZER

Application No.: 09/576,546

Filed: May 22, 2000

For: ANHYDROUS CARE OR MAKE-
UP COMPOSITION CONTAINING
FIBERS AND POLYOLS

)

) Group Art Unit: 1615

) Examiner: S. Tran

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*23/ Appeal
Brief(3)*

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8-27-03*

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER 37 C.F.R. § 1.192

In support of the Notice of Appeal filed January 24, 2003, and pursuant to 37 C.F.R. § 1.192, Appellant presents in triplicate this brief and encloses herewith a check for the fee of \$320.00 required under 37 C.F.R. § 1.17(c).

This Appeal is filed in response to the final rejection dated September 27, 2002, of claims 1-7 and 14-32, which are set forth in the attached Appendix. A Notice of Appeal was filed on January 24, 2003. The period for filing the Appeal Brief has been extended 5 months to August 24, 2003, by the accompanying petition and fee. If any additional fees are required or if the enclosed payment is insufficient, Appellant requests that the required fees be charged to Deposit Account No. 06-0916.

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I. Real Party In Interest

L'Oréal S.A. is the assignee of record.

II. Related Appeals and Interferences

Appellant's undersigned legal representative knows of no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

Claims 1-7 and 14-32 are at issue in this appeal. No claims have been allowed. Claims 1-7 and 14-32 have been finally rejected under 35 U.S.C. § 103(a).

IV. Status Of Amendments

All amendments have been entered, and no amendments under 37 C.F.R. § 1.116 have been filed.

V. Summary Of Invention

The invention relates to a composition comprising fibers compatibilized with a fatty phase by at least one polyol. The invention also relates to various types of cosmetic or make-up products, cosmetic care or treatment processes, and to methods of improving the staying power over time and/or gloss of an anhydrous care or make-up composition.

Fibers have previously been added to make-up products, such as mascaras and lipsticks. *Specification* at p. 1, lines 12-20. It has been found difficult, however, to disperse these fibers homogeneously without forming lumps, potentially resulting in a non-uniform make-up effect. *Id.* at p. 1, line 20 to p. 2, line 2. Additionally, the cosmetic

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properties of such make-up compositions may not be constant and reproducible, resulting in manufacturing problems and high manufacturing costs. *Id.* at p. 2, lines 2-5.

Moreover, make-up or care products such as foundations or lipsticks often contain fatty phases (such as waxes and oils), pigments, and/or fillers. *Id.* at p. 2, lines 6-9. When these prior art compositions are applied to the skin they may disadvantageously transfer to or at least become partly deposited on certain other surfaces with which they may be brought into contact, such as a glass, clothing, or skin. *Id.* at p. 2, lines 10-13. As a result, these prior art compositions can suffer from a "mediocre persistence" on the skin of the film applied, requiring regular reapplication. *Id.* at p. 2, lines 13-15. The appearance of these "unacceptable marks," e.g., on shirt collars can discourage some consumers from using these types of make-up. *Id.* at p. 2, lines 15-17.

Finally, these prior art compositions may have a tendency to migrate, i.e., the compositions overflow beyond the initial line applied. *Id.* at p. 2, line 18 to p. 3, line 2. These compositions can travel inside wrinkles and fine lines of the skin, causing an unaesthetic appearance. *Id.*

Attempts to prepare "transfer resistant" lip compositions include the use of siloxysilicate resins in combination with a volatile silicone oil and pulverulent fillers, or one or more volatile silicones combined with one or more hydrocarbon-based waxes. *Id.* at p. 3, lines 3-11. These compositions, however, have the drawback of leaving on the lips a film resulting from evaporation of the silicone oils. *Id.* at p. 3, lines 12-15. The film can become uncomfortable over time, causing a "sensation of drying out and tautness." *Id.* Additionally, compositions based on volatile silicone oils and resins

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produce matte colored films. *Id.* at p. 3, lines 16-18. This is a drawback for consumers interested in glossy products, e.g., for the lips. Finally, the transfer-resistance problems were not fully overcome, particularly when subjected to pressure or rubbing. *Id.* at p. 3, line 19 to p. 4, line 2.

The present inventors have surprisingly discovered that compositions comprising fibers compatibilized with a fatty phase by at least one polyol can form make-up products having good staying power, transfer resistance, and non-migration. *Id.* at p. 4, lines 12-17. The compositions can be comfortable to wear while maintaining a satiny, glossy appearance. *Id.* Moreover, the use of polyols can allow the fibers to be dispersed throughout the composition homogeneously, giving a homogeneous make-up result. *Id.*

VI. Issues

The issues presented for appeal are:

1. Whether claims 1-7, 15-18, 20, 23, 24, 26-32 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,659,562 (Arraudeau et al.);
2. Whether claims 1-7, 15-18, 20, 23, 24, 26-32 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,659,562 (Arraudeau et al.) in view of the Abstract of JP 04-159218A (JP '218);
3. Whether claims 1-7, 15-18, 20, 23, 24, 26-32 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,659,562 (Arraudeau et al.) in view of the Abstract of JP 05-320038 A (JP '038);

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4. Whether claims 1 and 14 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,659,562 (Arraudeau et al.) in view of U.S. Patent No. 5,965,146 (Franzke et al.); and

5. Whether claims 14-22 and 25-32 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,659,562 (Arraudeau et al.) in view of U.S. Patent No. 6,177,091 (Bara et al.).

VII. Grouping Of Claims

Each claim of this patent application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. For convenience in handling this Appeal, however, the claims will be grouped in one group. Thus, pursuant to 37 C.F.R. § 1.192(c)(7), in this Appeal, the rejected claims will stand or fall together.

VIII. Argument

The independent claims on appeal (claims 1 and 29-31) recite the common feature of a composition or make-up product comprising fibers, wherein the fibers are compatibilized with a fatty phase by at least one polyol, further wherein the at least one polyol is liquid at room temperature, and wherein the fibers have a length much greater than their diameter.

The independent claims also feature other limitations, which will be discussed in greater detail below.

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A. The disclosure of Arraudeau does not provide any basis for a *prima facie* case of obviousness

1. Arraudeau does not teach or suggest all the claim limitations

The Office maintains the rejection of claims 1-7, 15-18, 20, 23, 24, 26-32 under 35 U.S.C. §103 over U.S. Patent No. 4,659,562 (Arraudeau et al). *Final Office Action* at pp. 2-3 (September 27, 2002). The Office states that "Arraudeau teaches an anhydrous cosmetic composition comprising fiber ... glycerol, and oils." *Id.* at p. 3.

In making a rejection under 35 U.S.C. § 103, the Office has the initial burden to establish a *prima facie* case of obviousness. M.P.E.P. § 2143. To establish a *prima facie* case of obviousness, the Office must show, among other things, that the prior art reference teaches or suggests all the claim limitations. M.P.E.P. 2143.03.

Appellant respectfully submits that Arraudeau does not satisfy this requirement. Arraudeau fails to teach at least a composition comprising a fatty phase and at least one polyol, much less any compatibilization of fibers by at least one polyol. Arraudeau teaches fatty body ingredients such as "representative oils" at col. 2-3, but nowhere in this list mentions polyols except in the context of esters of alcohols. Col 3, lines 4-9. Based on this disclosure, Appellant respectfully disagrees with the Office's assertion that Arraudeau teaches a composition comprising glycerol. See *Final Office Action* at p. 3, line 2. The only mention of glycerol in Arraudeau is the "octanoates and decanoates of alcohols and polyalcohols, such as those of glycol and glycerol." *Arraudeau* at col. 3, lines 6-9. Thus, Arraudeau teaches the use of esters formed from glycerol, and not the use of glycerol itself. As further evidence of this teaching, claim 1 of Arraudeau lists oils

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such as glycerol octanoate, glycerol decanoate, and glycerol abietate; glycerol is not included in this list. *Id.* at col. 8, lines 12 , 13, and 27.

Arraudeau does generally mention polyalcohols in a list of optional cosmetic additives at col. 4, lines 23-28, but does not even remotely suggest whether they are liquid at room temperature or whether they are used to compatibilize fibers with a fatty phase in an anhydrous composition. Further, out of thirteen examples in Arraudeau, only Example 4 contains a polyol (butylene glycol), but the composition of Example 4 is not anhydrous, as discussed further below.

In addition, the Office continues to maintain that “compatibilizing” should be “given its broadest interpretation.” *Final Office Action* at p. 6. Appellant respectfully disagrees. Although an examiner must interpret a claim as broadly as its terms reasonably allow, words of the claim must be given their plain meaning “unless applicant has provided a clear definition in the specification.” M.P.E.P. § 2111.01.

It is also well settled patent law that an applicant may be his own lexicographer as long as the meaning given to a term is not repugnant to the term’s well-known usage (M.P.E.P. § 2111.02). “Any special meaning assigned to a term ‘must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.’” (M.P.E.P. § 2111.01).

A clear meaning of “compatibilized” has been provided in the specification, namely “total or partial solubilization or a dispersion, that is homogeneous by optical microscope, of the fibers in the fatty phase.” *Specification* at p. 8, lines 5-7. This meaning is not repugnant to any common usage understood by those of ordinary skill in

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the art. Thus, Appellant respectfully submits that the Office should properly interpret the claims in light of the present specification, *i.e.*, the definition provided at page 8. In light of the clear meaning of “compatibilized” provided in the specification, Arraudeau fails to teach such compatibilization of fibers with a fatty phase by at least one polyol.

Accordingly, by failing to teach or suggest at least one polyol that compatibilizes fibers with a fatty phase in an anhydrous composition, Arraudeau fails to teach or suggest the limitations of the present claims. As a result, Appellant respectfully submits that a *prima facie* case of obviousness in view of Arraudeau has not been established.

2. Arraudeau does not provide any suggestion or motivation to modify its teachings

Appellant respectfully submits that Arraudeau does not specifically guide one of ordinary skill in the art to an anhydrous composition containing fibers compatibilized with a fatty phase by at least one polyol.

To establish a *prima facie* case of obviousness, the Office must show, among other things, that there is a suggestion or motivation in the reference itself, or in the knowledge generally available to one of ordinary skill in the art, to modify reference teachings. M.P.E.P. 2143.

The Office takes the position that Arraudeau discloses the use of a polyol “to obtain the same result [desired] by the applicant, e.g., an anhydrous make-up formulation.” Final Office Action, p. 3. Appellant respectfully disagrees. Arraudeau’s general statement defining a “fatty body” as “at least one oil or a mixture of at least one oil and at least one wax” does not suggest, either expressly or impliedly, compatibilization of fibers with a fatty phase by at least one polyol. As discussed above,

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polyols are not listed anywhere in the long list of fatty body ingredients provided by Arraudeau from col. 2, line 52 to col. 3, line 37. At best, Arraudeau discloses adding "polyalcohols" to the composition as one of a variety of optional additive components. *Arraudeau* at col. 4, line 25. There is no teaching, however, that the polyalcohols of Arraudeau compatibilize fibers with a fatty phase. Indeed, the only specific polyalcohol disclosed in Arraudeau is butylene glycol of Example 4. Col. 5, line 29. As noted above, Example 4 exemplifies not an anhydrous composition but a formulation for an oil-in-water emulsion.

Independent claims 1, 30, and 31 require that the composition be anhydrous. Although Arraudeau is directed to compositions that "can be provided in aqueous or anhydrous forms," Arraudeau does not specifically single out anhydrous compositions as being particularly beneficial over aqueous compositions. *Arraudeau* at col. 1, lines 11-12. Thus, there is no motivation to modify Arraudeau's teachings to choose a polyol to compatibilize fibers with a fatty phase in an anhydrous composition, where Arraudeau fails to disclose both a polyol in a fatty phase and the compatibilization of fibers with the fatty phase.

Therefore, for at least these reasons, it is respectfully asserted that a *prima facie* case of obviousness has not been established over Arraudeau et al., and accordingly, the rejection should be withdrawn.

B. There is no motivation to combine Arraudeau with JP '218

The Office maintains the rejection of claims 1-7, 15-18, 20, 23, 24, and 26-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Arraudeau et al. in view of JP 04159218 ("JP '218"). *Final Office Action* at pp. 3-4.

The Office admits that Arraudeau is silent on the teaching of the IOB value and relies on JP '218 for teaching an IOB value of 3.5. *Id.* at p. 4.

Appellant respectfully submits that the combination of Arraudeau and JP '218 is improper because there is no motivation for this combination. "There must be suggestion or motivation ... to combine reference teachings." M.P.E.P. § 2143. First, and as discussed above, Arraudeau does not teach polyols other than perhaps as optional additives, so the Office's statement at pp. 3-4 of the Final Office Action that "it would have been *prima facie* obvious for one of ordinary skill in the art to modify Arraudeau's cosmetic composition using propylene glycol having IOB value of 3.5 in view of the teaching of [JP '218]" is entirely without basis. Why would one of ordinary skill find it obvious to add propylene glycol to the compositions of Arraudeau when Arraudeau neither teaches nor suggests the use of glycols in the first place other than as optional additives? The law requires evidence of a motivation to combine to be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). The evidence present here hardly meets that requirement.

Second, Arraudeau and JP '218 teach compositions used for very different purposes. Arraudeau describes make-up compositions comprising a "novel binding agent." *Arraudeau* at col. 1, lines 27-29. JP '218 describes a gelatin capsule composition comprising gelatin blended with a humectant, where the composition has "excellent stability because of no adhesion to a container." *JP '218* at Abstract. Neither reference contains any teaching or suggestion that would have motivated one of ordinary skill in the art to use the humectant of JP '218, which helps non-adhesion of a gelatin capsule composition, with the binding agent of Arraudeau. One of ordinary skill

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in the art could only make the combination with the use of hindsight, which is, of course, impermissible. Third, even if, for the sake of argument, the combination was assumed to be proper, JP '218 fails to remedy Arraudeau's deficiency of failing to teach compatibilizing fibers with a fatty phase by at least one polyol, as JP '218 does not even teach the use of fibers. JP '218 also fails to remedy the deficiency of Arraudeau's silence on IOB values. JP '218 teaches the use of humectants having selected IOB values, presumably to help form a composition that does not adhere to a container. There is no teaching, however, of whether these IOB values are applicable to Arraudeau's compositions.

Finally, there is no suggestion in Arraudeau of the desirability of the IOB values recited in claims 2 and 3. A "particular parameter must first be recognized as a result-effective variable... before determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." M.P.E.P. § 2144.05 II.B. Because Arraudeau is silent on the use of at least one polyol for compatibilization, Arraudeau is necessarily silent on IOB values of at least one polyol. Thus, Arraudeau fails to show the requisite recognition of IOB values for at least one polyol as a result-effective variable. Thus, reliance on a "routine experimentation" basis is not sufficient in where Arraudeau is silent on the result-effective variable.

Therefore, for at least these reasons, it is respectfully asserted that a *prima facie* case of obviousness has not been established over Arraudeau in view of JP '218 and that accordingly the rejection should be withdrawn.

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C. There is no motivation to combine Arraudeau with JP '038

The Office maintains the rejection of claims 1-7, 15-18, 20, 23, 24, and 26-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Arraudeau et al. in view of JP 05320038 ("JP '038"). *Final Office Action* at p. 4.

The Office concedes that Arraudeau is silent on IOB values and turns to JP '038 for teaching IOB values. *Id.*

Appellant respectfully submits that the combination of Arraudeau and JP '038 is improper because there is no suggestion for this combination. Like Arraudeau and JP '218, each reference teaches a composition used for very different purposes. As discussed above, Arraudeau describes make-up compositions comprising a "novel binding agent." *Arraudeau* at col. 1, lines 27-29. JP '038 describes "cosmetic giving excellent hot feeling even by applying to a wet body after bathing and exhibiting excellent blood flow promoting effect." *JP '038* at Abstract. Appellant respectfully asserts that there is no motivation provided to use the polyethylene glycol of JP '038, useful for giving an "excellent hot feeling," to a composition containing the binding agent of Arraudeau. Because these purposes are vastly different, one of ordinary skill in the art can only make the combination with the use of hindsight, which is impermissible.

Even if the combination were proper, which is not conceded here, JP '038 fails to remedy Arraudeau's deficiency of failing to teach compatibilizing fibers with a fatty phase by at least one polyol. JP '038 fails to teach the use of fibers, much less compatibilizing fibers in a fatty phase with at least one polyol. Moreover, the IOB values taught by JP '038 are useful for compositions comprising polyethylene glycol and polyoxypropylene. There is no teaching in JP '038 whether these IOB values would

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benefit the compositions of Arraudeau. Thus, the combination of references fails to suggest the claimed invention.

Finally, as discussed in the previous section, Arraudeau fails to show the requisite recognition of the use of at least one polyol, much less the use of at least one polyol having the claimed IOB values. Thus, there is no motivation to use the polyethylene glycol of JP '038 having a specific IOB value in the compositions of Arraudeau.

Therefore, for at least these reasons, it is respectfully asserted that a *prima facie* case of obviousness has not been established over Arraudeau in view of JP '038. Accordingly, the rejection should be withdrawn.

D. There is no motivation to combine Arraudeau with Franzke

The Office maintains the rejection of claims 1 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Arraudeau et al. and U.S. Patent No. 5,965,146 ("Franzke et al."). *Final Office Action* at pp. 4-5.

The Office concedes that Arraudeau does not teach the polyamide fibers recited in present claim 14 and turns to Franzke for teaching polyamide fibers. *Id.* at p. 5.

Appellant respectfully submits that the combination of Arraudeau and Franzke does not teach the claimed invention. Arraudeau fails to teach compatibilizing fibers in an anhydrous composition with a fatty phase by at least one polyol and Franzke does not remedy this deficiency. Franzke is directed to aqueous or ethanol-based compositions. The first sentence of the abstract of Franzke describes the invention as an "aqueous or aqueous/alcoholic cosmetic composition." Franzke discloses numerous examples (25 in all), each of which exemplify a composition based on an aqueous

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phase, an aqueous/alcoholic phase, or other non-fatty phases. When read as a whole, one of ordinary skill in the art would readily recognize that Franzke does not teach anhydrous compositions requiring a fatty phase, much less compatibilizing fibers with a fatty phase by at least one polyol.

At best, Franzke discloses "glycols" or "fatty alcohols" among a long list of "conventional cosmetic ingredients" at col. 2, line 46 to col. 3, line 24. See *Franzke* at col. 2, lines 50-51 and col. 3, line 20. However, Franzke contains no specific guidance to choose these specific alcohols and add them to the compositions of Arraudeau. Yet such specific guidance to combine reference teachings is required by the case law, i.e., evidence of a motivation to combine must be "clear and particular." *In re Dembiczaik*, 175 F.3d 994, 999. No clear and particular guidance exists here. Instead, Arraudeau and Franzke present a myriad of possibilities with no guidance other than hindsight to choose the ingredients to satisfy the requirements of the present claims. Neither reference, taken alone or in combination, appears to recognize the benefits of the presence of compatibilizing fibers in a fatty phase by at least one polyol. It appears that the only basis for this rejection is combining elements from individual references, similar to a "reference-by-reference, limitation-by-limitation analysis," which is improper. *Id.* at 1000.

Moreover, independent claim 1 requires an anhydrous care or makeup composition. As discussed above, Arraudeau teaches the use of either aqueous or anhydrous compositions. Franzke, in contrast, unequivocally teaches the use of an aqueous or alcohol-based composition. Thus, the combination of references does not specifically guide one of ordinary skill in the art to the use of anhydrous compositions.

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The Office continues to maintain that Franzke at col. 3, lines 52-58 (actually the Office appears to be referring to col. 2, lines 52-58) teaches anhydrous compositions because water can be present in the composition in an amount from 0.1 to 30% by weight. *Final Office Action* at p. 9. This amount, according to the Office, falls within the water content defined in Appellant's specification of "not more than 6 % relative to the total weight of the composition." *Id.*

Appellant respectfully submits that the Office has mischaracterized the teachings of Franzke. The passage of Franzke cited by the Office Action (col. 2, lines 52-58) refers not to the concentration of water, but rather to the concentration of wetting agents or emulsifiers. The asserted passage resides within a paragraph listing "conventional cosmetic ingredients." *Id.* at col. 2, line 47. Each type of cosmetic ingredient is separated in the list by a semi-colon. For example, the description of "solvents, such as water," ends with a semi-colon at col. 2, line 51. Recitation of the next class of ingredients, the wetting agents or emulsifiers, ends at col. 2, line 58 ("0.1 to 30 percent by weight"). The next class of ingredients, perfume oils, can be present in a different amount, i.e., an amount of from 0.1 to 0.5 percent by weight. *Id.* at col. 2, lines 58-59. This pattern is repeated throughout this entire paragraph ending at col. 4, line 25. Thus, Appellant respectfully submits that nowhere does Franzke teach the use of an anhydrous composition.

For at least these reasons, including the fact that the references provide no motivation for their combination, it is respectfully asserted that a *prima facie* case of obviousness has not been established over Arraudeau in view of Franzke. Accordingly, the rejection should be withdrawn.

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E. There is no motivation to combine Arraudeau with Bara

The Office continues to maintain the rejection of claims 14-22 and 25-32 under 35 U.S.C. § 103(a) as being unpatentable over Arraudeau et al., in view of Bara et al. (U.S. Patent No. 6,177,091).

The Office concedes that Arraudeau does not teach parleam oil and turns to Bara for teaching such oils. Office Action at page 5. According to the Examiner, the motivation for combining these references is that "an anhydrous make-up formulation containing fiber [is] useful for cosmetic fields." *Id.*

Appellant respectfully disagrees. Bara does not disclose the use of fibers. Thus, one of ordinary skill in the art would not find any suggestion in Bara to compatibilize fibers with any fatty phase, much less a fatty phase by at least one polyol.

Moreover, Bara is directed to a composition comprising an organopolysiloxane and a fatty phase comprising at least one non-volatile oil and at least one wax. In an isolated passage at col. 3, line 37, Bara discloses fatty alcohols such as octyldodecanol or oleyl alcohol. However, to arrive at the claimed combination of fatty phase and at least one polyol, one of ordinary skill in the art must pick and choose this isolated disclosure within a the long list of exemplary non-volatile oils provided by Bara at col. 3, lines 14-45, without any guidance to do so. Again, specific guidance to combine reference teachings is required by the case law, i.e., evidence of a motivation to combine must be "clear and particular." *In re Dembicza*k at 999. No clear and particular guidance for the combination exists here.

Finally, Bara provides no specific motivation for anhydrous compositions. Bara's compositions "may be an oil-in-water or water-in-oil emulsion, or a solid or supple

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anhydrous gel." *Bara* at col. 2, lines 4-6. There is no suggestion that anhydrous compositions are particularly beneficial as emulsions containing water can be equally effective. Thus, *Bara* fails to specifically guide one of ordinary skill in the art to anhydrous compositions.

In light of the above, Appellant submits that *Bara* fails to remedy the deficiencies of *Arraudeau*, i.e., *Bara* does not supply any teaching to make up for *Arraudeau*'s failure to teach compatibilizing fibers in an anhydrous composition with a fatty phase by at least one polyol. Therefore, for at least these reasons, it is respectfully asserted that a *prima facie* case of obviousness has not been established over *Arraudeau* in view of *Bara*.

IX. Conclusion

For the reasons set forth above, Appellant respectfully maintains that a *prima facie* case of obviousness has not been established by the Office based on the cited references, taken alone or in combination. Thus, Appellant respectfully requests reversal of all the rejections of claims 1-7 and 14-32 under 35 U.S.C. § 103(a).

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To the extent any further extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Date: August 21, 2003

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APPENDIX - PENDING CLAIMS

1. An anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol, further wherein said at least one polyol is liquid at room temperature, and wherein said fibers have a length much greater (») than their diameter.
2. A composition according to Claim 1, wherein said at least one polyol has an IOB value ranging from 1 to 7.
3. A composition according to Claim 2, wherein said at least one polyol has an IOB value ranging from 1.5 to 5.5.
4. A composition according to Claim 1, wherein said at least one polyol is chosen from propylene glycol, butylene glycol, isoprene glycol, pentylene glycol, hexylene glycol, polyethylene glycols containing from 4 to 8 ethylene glycol units, glycerol and panthenol.
5. A composition according to Claim 1, wherein said at least one polyol is present in an amount ranging from 0.1 to 95% relative to the total weight of the composition.
6. A composition according to Claim 5, wherein said at least one polyol is present in an amount ranging from 1 to 50% relative to the total weight of the composition.
7. A composition according to Claim 1, wherein said fibers are chosen from silk fiber, cotton fiber, wool fiber, flax fiber, cellulose fibers extracted from wood, from plants or from algae, polyamide fiber, rayon fiber, viscose fiber, acetate fiber, cellulose

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fiber or silk fiber, poly-p-phenylene terephthamide fiber, acrylic fiber, polyolefin fiber, glass fiber, silica fibers aramide fiber, carbon fiber, polytetrafluoroethylene fiber, insoluble collagen fiber, polyester fiber, polyvinyl chloride or polyvinylidene chloride fiber, polyvinyl alcohol fiber, polyacrylonitrile fiber, chitosan fiber, polyurethane fiber, polyethylene phthalate fiber, fibers farmed from a mixture of polymers, and surgical fibers.

14. A composition according to Claim 1, wherein said fibers are polyamide fibers or poly-p-phenylene terephthamide fibers.

15. A composition according to Claim 1, wherein said fibers have a length L and a diameter D wherein L/D is chosen in a range extending from 3.5 to 2500.

16. A composition according to Claim 15, wherein said UD is chosen in a range extending from 5 to 500.

17. A composition according to Claim 16, wherein said L/D is chosen in a range extending from 5 to 500.

18. A composition according to Claim 1, wherein said fibers have a length ranging from 0.1 to 5 mm.

19. A composition according to Claim 18, wherein said fibers have a length ranging from 0.25 to 1.5 mm.

20. A composition according to Claim 1, wherein said fibers have an average diameter ranging from 5 to 50 Nm.

21. A composition according to Claim 1, wherein said fibers have a yarn count ranging from 0.15 to 30 deniers.

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22. A composition according to Claim 21, wherein said fibers have a yam count ranging from 0.18 to 18 deniers.
23. A composition according to Claim 1, wherein said fatty phase comprises at least one oil that is liquid at room temperature, chosen from hydrocarbon-based oils of animal, plant or mineral origin, silicone oils and fluoro oils.
24. A composition according to Claim 1, further comprising at least one oil chosen from perhydrosqualene; heptanoic and octanoic acid triglycerides, sunflower oil, corn oil, soybean oil, marrow oil, grapeseed oil, sesame oil, hazelnut oil, apricot oil, macadamia oil, arara oil, castor oil, avocado oil, caprylic/capric acid triglycerides, jojoba oil and karite butter; liquid paraffin and derivatives thereof, petroleum jelly, polydecenes and hydrogenated polyisobutene; purcellin oil, isopropyl myristate, isononyl isononanoate, 2-ethylhexyl palmitate, 2-octyldodecyl stearate, 2-octyldodecyl erucate, isostearyl isostearate; isostearyl lactate, octyl hydroxystearate, octyldodecyl hydroxystearate, diisostearyl malate, triisocetyl citrate, fatty alkyl heptanoates, octanoates and decanoates; propylene glycol dioctanoate, neopentyl glycol diheptanoate, diethylene glycol diisononanoate; pentaerythritol esters; octyldodecanol, 2-butyloctanol, 2-hexyldecanol, 2undecylpentadecanol and oleyl alcohol; volatile or non-volatile, linear or cyclic polymethyl siloxanes that are liquid at room temperature; phenyl trimethicones, phenyltrimethylsiloxydiphenylsiloxanes, diphenyl dimethicones, diphenylmethyldiphenyltsilosiloxanes, and 2-phenylethyltdmethylsiloxy silicates.
25. A composition according to Claim 24, wherein said hydrogenated polyisobutene is parleam.

26. A composition according to Claim 1, further comprising at least one particulate filler.
27. A composition according to Claim 1, wherein said composition is in the form of a rigid or supple anhydrous gel, optionally cast as a stick or dish.
28. A composition according to Claim 1, further comprising at least one ingredient chosen from dyestuffs, antioxidants, essential oils, preserving agents, fragrances, liposoluble polymers, agents for gelling the liquid fatty phase, waxes, gums, fillers, dispersants, and cosmetic and dermatological active agents.
29. A lipstick or a lip gloss, a foundation, a concealer product, a mascara, an eyeliner, a face powder, an eyeshadow, a make-up product for the body, an antisun care product or a make-up product for the hair comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol, further wherein said at least one polyol is liquid at room temperature, and wherein said fibers have a length much greater (») than their diameter.
30. A cosmetic care or treatment process for human keratin substances, comprising applying to said human keratin substances an anhydrous care or makeup composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol, further wherein said at least one polyol is liquid at room temperature, and wherein said fibers have a length much greater (») than their diameter.
31. A method of improving the staying power over time and/or gloss of an anhydrous care or make-up composition containing a fatty phase and at least one polyol

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that is liquid at room temperature comprising compatibilizing fibers in said anyhydrous care or make-up composition.

32. The method according to Claim 31, wherein said method improves the staying power of an anhydrous care or make-up composition while rubbing.

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